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2
3 **UNITED STATES DISTRICT COURT**
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

4) Case No.: 3:17-cv-1295
5 **LOUIS WOLKENSTEIN,**)
6)

7 Plaintiff,)
8)

9 v.)
10)

11 **CITIBANK,**)
12)

13 Defendant.)
14)
15)

JURY TRIAL DEMANDED

16 **COMPLAINT**

17
18 LOUIS WOLKENSTEIN ("Plaintiff"), by and through his attorneys,
19 KIMMEL & SILVERMAN, P.C., alleges the following against CITIBANK
20 ("DEFENDANT"):

21 **INTRODUCTION**

22 1. Plaintiff's Complaint is based on the Telephone Consumer Protection
23 Act ("TCPA"), 47 U.S.C. §227.
24

25 **JURISDICTION AND VENUE**

26 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331. See Mims v.
27 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).
28

1 3. Defendant regularly conducts business in the Commonwealth of
2 Pennsylvania, thus, personal jurisdiction is established.

3 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as the events in
4 this matter took place while Plaintiff was residing in Scranton, Pennsylvania.
5

6 **PARTIES**

7 5. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).
8

9 6. Plaintiff is a natural person residing in Pittsburgh, Pennsylvania.

10 7. Defendant is a “person” as that term is defined by 47 U.S.C. §
11 153(39).

12 8. Defendant is a corporation with its principal place of business located
13 at PO Box 6500, Sioux Falls, South Dakota 57117.
14

15 9. Defendant acted through its agents, employees, officers, members,
16 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
17 representatives, and insurers.
18

19 **FACTUAL ALLEGATIONS**

20 10. Plaintiff has a cellular telephone number that he has had for at least
21 one year.

22 11. Plaintiff has only used this phone as a cellular telephone.
23

24 12. Beginning in or around early to mid-October 2015, Defendant placed
25 repeated telephone calls to Plaintiff’s cellular telephone number.
26

1 13. Defendant used an automatic telephone dialing system, automated
2 message and/or prerecorded voice when contacting Plaintiff.

3 14. Plaintiff knew that Defendant was using an automatic telephone
4 dialing system, automated message and/or prerecorded voice because the calls
5 would begin with a recording before he would speak with Defendant's
6 representatives.
7

8 15. Defendant's telephone calls were not made for "emergency purposes."
9

10 16. Desiring to stop the repeated telephone calls, Plaintiff spoke with
11 Defendant's representatives to advise them that he no longer wanted to be
12 contacted on his cellular telephone and to stop calling in or around mid-October
13 2015
14

15 17. Once Defendant was aware that its calls were unwanted and to stop,
16 there was no lawful purpose to continue making further calls, nor was there any
17 good faith reason to place calls.
18

19 18. However, Defendant failed to update its records to restrict telephone
20 calls to Plaintiff's cellular telephone despite Plaintiff's request and continued to
21 call Plaintiff.
22

23 19. It was frustrating and annoying for Plaintiff to receive such continuous
24 and repeated telephone calls from Defendant on his cellular telephone and as such
25 Plaintiff took measures to block Defendant's calls.
26

1 20. Upon information and belief, Defendant conducts business in a
2 manner which violates the TCPA.

3
4 **COUNT I**
5 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER**
6 **PROTECTION ACT**

7 21. Plaintiff incorporates the forgoing paragraphs as though the same were
8 set forth at length herein.

9 22. Defendant initiated multiple automated telephone calls to Plaintiff's
10 cellular telephone number.

11 23. Defendant's initiated these automated calls to Plaintiff using an
12 automatic telephone dialing system.

13 24. Defendant repeatedly placed non-emergency calls to Plaintiff's
14 cellular telephone.

15 25. Under § 227(b)(3)(A) of the TCPA, a person or entity may bring a
16 private cause of action in an appropriate court based on a violation of the TCPA or
17 the regulations prescribed under the TCPA to enjoin such violation.
18

19 26. Under § 227(b)(3)(B) of the TCPA, a person or entity may bring a
20 private cause of action in an appropriate court "to recover for actual monetary loss
21 from such a violation, or to receive \$500 in damages for each such violation
22 whichever is greater."
23
24

1 27. Based upon the conduct of Defendant, Plaintiff avers that the
2 enhancement of damages provided for by the TCPA allowing for Plaintiff to
3 recover up to \$1,500 per call/violation be applied to calls placed.
4

5 28. Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by
6 placing repeated calls using an automatic telephone dialing system to Plaintiff's
7 cellular telephone.
8

9 29. Defendant's calls to Plaintiff's cellular telephone after he revoked
10 were not made with Plaintiff's prior express consent.

11 30. Defendant's acts as described above were done with malicious,
12 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
13 under the law and with the purpose of harassing Plaintiff.
14

15 31. The acts and/or omissions of Defendant were done unfairly,
16 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
17 lawful right, legal defense, legal justification or legal excuse.
18

19 32. As a result of the above violations of the TCPA, Plaintiff has suffered
20 the losses and damages as set forth above entitling Plaintiff to an award of
21 statutory, actual and trebles damages.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, LOUIS WOLKENSTEIN, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, LOUIS WOLKENSTEIN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: July 21, 2017

By: /s/ Amy Lynn Bennecoff Ginsburg
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